

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-206286

DATE: February 28, 1983

MATTER OF: Wilson & Hayes, Inc.

DIGEST:

1. Use of an incorrect freight rate in the original evaluation of an f.o.b. origin bid does not affect the validity of the award where corrected freight rate still does not make protester the low, evaluated bidder.
2. Freight rates applied in evaluating bids generally must have been published or in effect at the time of bid opening.
3. Fact that procuring agency made one error in evaluation of f.o.b. origin bid does not prove that additional errors exist. Moreover, contracting officer has a right to rely on rate information provided by transportation specialist in making award.

Wilson & Hayes Inc. protests the allegedly incorrect evaluation of transportation costs and the resulting award of a contract by the Navy Ships Parts Control Center, Mechanicsburg, Pennsylvania, to Superior Steel Door & Trim Company. Under invitation for bids No. N00104-81-B-1899, the Navy sought metal clothing lockers to be used aboard ships; it evaluated bids, submitted on an f.o.b. origin basis, by adding transportation costs.

Wilson & Hayes argues that the Navy erred both as to the rates and the method of transportation (truck vs. rail) used to displace its apparent low bid. Although the Navy acknowledges a more than \$500 error in evaluation, Wilson & Hayes is still not the low evaluated bidder. We therefore deny the protest.

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Background:

The solicitation in question was issued October 27, 1981. It required delivery of 2,028 lockers to three different destinations on the west coast and four on the east coast, as follows:

Philadelphia, Pennsylvania	624
Norfolk, Virginia	381
Jacksonville, Florida	34
Charleston, South Carolina	100
Total east coast	1,139
San Diego, California	405
Oakland, California	211
(bound for Pearl Harbor, Hawaii)	
Bremerton, Washington	273
Total west coast	889

Of thirteen bids opened on November 30, the lowest were:

	Unit Price	Extended Price
Wilson & Hayes	\$75	\$152,100
Tri-Way, Ind., Inc.	\$76	\$154,128
Superior Steel	\$77	\$156,156

To evaluate these bids, the Navy obtained rates from the Military Traffic Management Command, Bayonne, New Jersey. It then compared truck and rail rates for shipment from each bidder's facility to each destination, adding surcharges as applicable and selecting the lowest-cost method of transportation. Initially, this resulted in the addition of transportation costs of \$10,142.65 to Wilson & Hayes' bid and \$5,487.49 to Superior Steel's bid. (Because Wilson & Hayes and Tri-Way are both located in Seattle, the Navy did not evaluate transportation costs for the latter; they would have been the same for both firms, and Tri-Way's bid therefore could not have been evaluated as lower than that of Wilson & Hayes.) Total evaluated prices were as follows:

Wilson & Hayes	\$162,242.65
Superior Steel	\$161,643.49

On the basis of this evaluation, the Navy awarded a contract to Superior Steel, the low bidder by \$599.16, on January 11, 1982, with deliveries scheduled for 270 days thereafter.

Threshold Issue:

Wilson & Hayes' protest includes a threshold issue of whether transportation costs should have been evaluated at all, since in the list of standard clauses applying to the procurement, the Navy checked Defense Acquisition Regulation (DAR) § 7-2003.70 (DPC 76-8, June 15, 1978), indicating that transportation costs would not be evaluated. The Navy acknowledges that this clause was checked inadvertently, but argues that because numerous other solicitation provisions indicated that transportation costs would be evaluated, the solicitation--read as a whole and reasonably construed--gave bidders notice that these costs would be evaluated. Even if inclusion of the clause created an ambiguity, the Navy continues, Wilson & Hayes had a duty to seek clarification and/or to protest the alleged ambiguity before bid opening.

We agree, both as to the reasonable construction of the solicitation and as to the protester's duty to inquire, see Mercer Products & Manufacturing Company, B-205316, February 22, 1982, 82-1 CPD 155, or to file a protest before bid opening. Continental Water Systems Corporation, B-205970, June 28, 1982, 61 Comp. Gen. ____, 82-1 CPD 627. Moreover, Wilson & Hayes appears to have abandoned this basis of protest in its later submissions to our Office.

Evaluation of Transportation Costs:

The central issue of Wilson & Hayes' protest, transportation rates and methods used by the Navy, results in what the firm believes is inequitable treatment of east and west coast bidders. Wilson & Hayes, as noted above, is located in Seattle, while Superior Steel is located in Hopewell Junction, New York. According to the protester, since each would have had approximately the same number of cross-country shipments, it is "inherently incredible" that the transportation costs applied to Wilson & Hayes' bid were nearly double those applied to Superior Steel's.

The Navy, in its evaluation, had initially determined that for shipment of 405 lockers to San Diego, it would be most economical to use rail for Superior Steel and truck for Wilson & Hayes. Total transportation costs for Superior Steel's shipment were \$2,124.35, based on a rate of \$16.24 per hundred weight (CWT) for rail, compared with \$2,627.15 for truck. Wilson & Hayes protested that the Navy had significantly underestimated rail rates for this shipment. The Military Traffic Management Command, which apparently made the initial error, and the Navy now agree that this shipment should have been evaluated using a rate of \$28.39 CWT, so that the correct total for rail transportation from Hopewell Junction to San Diego is \$3,713.70. Thus, Superior Steel's bid should have been evaluated using the truck rate that, although higher than the rail rate originally used, is actually most favorable. The Navy's recalculations on this basis are as follows:

Truck transportation	\$2,627.15
Rail transportation (based on - incorrect rate)	<u>2,124.35</u>
Error in evaluated cost	\$ 502.80

Superior's initial evaluated bid price	\$161,643.49
Additional cost for truck transportation	<u>+ 502.80</u>
Correct evaluated bid price	\$162,146.29

The Navy, however, argues that its award to Superior Steel was proper, since the firm remains the low evaluated bidder:

Wilson & Hayes	\$162,242.65
Superior Steel	<u>- 162,146.29</u>
Difference	\$ 96.36

Wilson & Hayes also protests the Navy's determination that for shipment of 624 lockers to Philadelphia, it would be most economical to use truck for Superior Steel and rail for Wilson & Hayes. On the basis of weight and cube of the lockers, the Navy determined that two truckloads would be required for this particular shipment. At \$2,602.61 a load, the total evaluated cost was \$5,205.22 for truck transportation from Seattle to Philadelphia, compared with \$4,903.60 for rail transportation. The Navy therefore used rail rates to evaluate Wilson & Hayes' bid.

Wilson & Hayes argues that it could have shipped the 624 lockers itself by a common carrier trucking company, Transcom, for \$3,534.13, a rate based on use of 1-1/3 truckloads. According to the protester, rail was therefore not the most economical method of transportation for this shipment.

Wilson & Hayes further alleges that the evaluation was erroneous because the work sheets show that the Navy inconsistently used a Uniform Freight Class item number applying to "other than" steel lockers or cabinets and a National Motor Freight Class item number applying to steel. Although the Navy's report to our Office indicates that "steel without glass" was the classification used to evaluate transportation costs, Wilson & Hayes notes that the specifications actually called for aluminum lockers.

The Navy responds that neither the alleged use of an improper item number nor the classification of the lockers as steel affects the evaluation. The rates provided by the Military Traffic Management Center, the Navy explains, do not differentiate between steel and other metals. The Navy further states that the rates for truck transportation cover "motor freight of all kinds," and the rates for rail transportation are "rail commodity rates," based on the lockers as a commodity without reference to their metal content.

The Navy concludes that except for the use of an incorrect rate for rail transportation from Hopewell Junction to San Diego, the evaluation was proper. Wilson & Hayes, however, continues to protest that due to the complex nature of transportation tariffs, commodities, and the like, the wrong rates or method of transportation could have been used in evaluating other shipments for this procurement, and a margin of less than \$100 indicates that total evaluated bid prices still may not be correct.

GAO Analysis:

The Navy has, in effect, sustained Wilson & Hayes' protest with regard to underestimation of the cost of rail transportation from Hopewell Junction to San Diego. However, the agency has not changed its position on the use of rail, rather than truck, rates for evaluation of transportation costs from Seattle to Philadelphia. This is the only other determination

specifically challenged by Wilson & Hayes. (For all other destinations, the Navy used truck rates to evaluate both bidders.)

There is nothing in the record to indicate when the more economical truck rate that Wilson & Hayes contends it could have obtained for shipment of lockers from Seattle to Philadelphia was in effect; the rate appears for the first time in a protest letter dated March 11, 1982. It is well settled, however, that the rates applied in evaluating bids must be the best available on file or published at the time of bid opening, in this case November 30, 1981. 39 Comp. Gen. 774 (1960); see also DAR § 19-301.1(a).

Nor is there anything in the record to demonstrate that only 1-1/3 truckloads would be required to transport the requisite number of lockers to Philadelphia. The Navy's evaluation of both Superior Steel's and Wilson & Hayes' bids was based on the use of two trucks. Wilson & Hayes has not shown that less than two truckloads would meet the Navy's needs, given the weight and cube of this shipment, and has not indicated whether the rate quoted by its carrier was based on consolidation of less than a full load of lockers with other goods, i.e., shared use, or on exclusive use of a vehicle for the Government shipment--a factor that also could affect rates. See generally American Farm Lines, Inc., B-199475, September 29, 1981, 81-2 CPD 259 (involving exclusive use of a vehicle).

We cannot conclude, as Wilson & Hayes would have us, that the Navy's acknowledgment of error in one rate proves that there also must have been errors in calculation of transportation costs for some or all other shipments. Rather, we believe that despite the very small difference in total evaluated bid prices, Wilson & Hayes has failed to meet its burden of proof. See Line Fast Corporation, B-205483, April 26, 1982, 82-1 CPD 382. There have been no allegations of bad faith, and our Office has stated that a contracting officer, as in this case, has a right to rely on the information provided by a transportation rate specialist. R.B.S., Inc., B-194514.3, January 7, 1980, 80-1 CPD 16.

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The protest is denied.

for *Milton J. Aorolan*
Comptroller General
of the United States